

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

LA.App..No. 539 of 2002(D)

LAR.175/1998 of PRL.SUB COURT,KOTTAYAM
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APPELLANT: CLAIMANT

LITTLE DAUGHTER'S OF ST.JOHNS GILBERT
CHARITABLE SANYASA SAMOOHAM, KOTHANELLOOR,
VAIKOM TALUK,KOTTAYAM DISTRICT,REPRESENTED BY ITS
MOTHER SUPERIOR REV.SR.GABRIAL.

BY ADV. SRI.M.V.JOHN

RESPONDENT: RESPONDENT

STATE OF KERALA REPRESENTED BY THE
DISTRICT COLLECTOR,KOTTAYAM.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 18/09/2007 ALONG WITH LAA NO. 1821 OF 2002 , THE COURT ON
28/09/2007 DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

LAA 539 & 1821 OF 2002

Dated: September 28, 2007

JUDGMENT

Harun-UI-Rashid, J.

LAA 539/2002 was filed by the claimant and LAA 1821/2002 was filed by the State of Kerala against the judgment and decree dt. 31.7.2001 in LAR 175/1998 on the file of the Prl.Sub Court, Kottayam. The claimant is the appellant.

2. The extent of land acquired for the construction of MVIP Branch Canal is 26.80 Ares in Sy.No.514/12 B-2-2 of Kothanalloor Village in Kottayam Taluk. S.4(1) notification was published on 17.7.1995. In support of the claim for enhanced compensation, on the side of the claimant AWs. 1 and 2 are examined and Exts.A1 and A2 are marked. On the side of the respondents Exts.R1 and R2 are marked, Ext.C1 commissin report also is marked.

3. Exts.A1 and A2 are the certified copies of the judgments in LAR 204/1998 and 324/1998 of the Additional Sub Court, Kottayam. Ext.C1 is the report of the Commissioner submitted in the present case. As per the notice to the award, the land under acquisition is included in category No.II. Category No.II relates to land having panchayat road accessibility and low yielding rubber trees and other crops. The acquired land is at a distance of 1¼ kms. from the land in LAR 324/1998 and 1.35 kms. from the land in LAR 204/1998. Considering the oral evidence adduced by the

claimant and Exts.A1 and A2 judgments, where 60% enhancement is allowed, the court below held that the same rate of enhancement is allowable in the present case. The court also noticed that there are important institutions in the vicinities and the contention of the claimant regarding the nature, situation and potentiality of the land cannot be thoroughly discarded. Considering the evidence, both oral and documentary, the court below held that the appellant is entitled to compensation at the rate of 60% per Are over and above the land value fixed by the acquisition authorities in conformity with the rate awarded in Exts.A1 and A2. The appellant/claimant in the claim statement filed before the court below claimed Rs.50,000/- per cent. The land acquisition officer fixed the land value at Rs.10374/- per Are. The rate was further increased by the court below at the rate of 60% per Are over and above the land value fixed by the land acquisition officer. The court below thus held that the appellant/claimant is entitled to get additional value to the land and also for enhanced compensation for the compound wall and other improvements made therein. According to the claimant, the acquired property has more importance than the property covered by Exts.A1 and A2 and therefore they are entitled to a land value to be fixed at a rate more than what has been fixed in Exts.A1 and A2. According to the appellant, the acquired property has more importance than the property mentioned in category Nos. I and III. In the appeal memorandum the claim of the appellant is limited to Rs.25000/- per Are towards the enhanced value of

the land. It was pointed out that in Ext.C1 report, the advocate commissioner categorically reported that the entrance to the property is wide, that the acquired property has much transportation facility than what is available to the property mentioned in Ext.A2 and that the acquired property is more important than the property in Exts.A1 and A2 judgments. Considering Ext.C1 commission report and the importance of the locality, the potential nature of the acquired property and its nearness to important institutions, we are of the view that the matter has to be remanded to the court below for a reconsideration of the claim for enhanced value of the land and the improvements such as granite compound wall and iron gate.

Hence the judgment and decree under appeal are set aside and the case is remanded to the court below for de novo consideration. The parties are free to adduce further evidence, if any. The appellants are entitled to refund of the full amount of court fee paid.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. Nos.539 & 1821 of 2002

JUDGMENT

28.9.2007